

MINNESOTA CODE OF AGENCY RULES

RULES OF THE MINNESOTA WASTE MANAGEMENT BOARD

1982 Reprint



All rules as in effect on September 15, 1982

Prepared by

**THE OFFICE OF REVISOR OF STATUTES
Room 3, State Capitol, St. Paul, Minnesota 55155**

Distributed by

**STATE REGISTER AND PUBLIC DOCUMENTS DIVISION
DEPARTMENT OF ADMINISTRATION
117 University Avenue, St. Paul, Minnesota 55155**

MINNESOTA WASTE MANAGEMENT BOARD

Rules Governing Inspection of Public Records Held by the Waste Management Board and Defining Certain Terms

6 MCAR S 8.001	Duty of candor.
6 MCAR S 8.002	Definitions.
6 MCAR S 8.003	Board meetings and officers.
6 MCAR S 8.004	Execution of documents.
6 MCAR S 8.005	Staff.
6 MCAR S 8.006	Temporary board members.
6 MCAR S 8.007	Committees.
6 MCAR S 8.008	Advisory councils and advisory task forces.
6 MCAR S 8.009	Final decisions and orders.
6 MCAR S 8.010	Reconsideration and rehearing.
6 MCAR S 8.011	Conflict of interest.
6 MCAR S 8.012	Public participation in board matters.
6 MCAR S 8.013	Ex parte communication.
6 MCAR S 8.014	Reimbursement for out-of-state travel.
6 MCAR S 8.015	Inspection of public records.
6 MCAR S 8.016	Computation of time.

Rules Governing the Establishment, Alteration, and Termination of Solid Waste Management Districts

6 MCAR S 8.101	Establishment, termination and alteration of solid waste management districts.
6 MCAR S 8.102	Definitions.
6 MCAR S 8.103	Petition requirements and procedures for establishment or alteration of a district.
6 MCAR S 8.104	Petition requirements and procedures for termination of a district.
6 MCAR S 8.105	Designation of resource recovery facilities.
6 MCAR S 8.106	Extension of review periods.
6 MCAR S 8.107	Additional information.

Rules Governing Supplementary Review

- 6 MCAR S 8.201 Supplementary review of decisions concerning establishment of certain facilities.
- 6 MCAR S 8.202 Definitions.
- 6 MCAR S 8.203 Eligibility for supplementary review.
- 6 MCAR S 8.204 Review of petitions for supplementary review.
- 6 MCAR S 8.205 Additional information.
- 6 MCAR S 8.206 Procedure for supplementary review.
- 6 MCAR S 8.207 Identification of issues.
- 6 MCAR S 8.208 Appointment of temporary board members.
- 6 MCAR S 8.209 Mediation.
- 6 MCAR S 8.210 Recommended statement of issues.
- 6 MCAR S 8.211 Board meeting to establish scope and procedures for the second phase of the review.
- 6 MCAR S 8.212 Hearing procedures following mediated agreement.
- 6 MCAR S 8.213 Contested supplementary review hearing.
- 6 MCAR S 8.214 Reconciliation procedures.
- 6 MCAR S 8.215 Decision of Waste Management Board.
- 6 MCAR S 8.216 Terms, conditions, and requirements of permitting agencies.
- 6 MCAR S 8.217 Revocation of approval.
- 6 MCAR S 8.218 Computation of time.

Rules Governing Inspection of Public Records Held by
the Waste Management Board and Defining Certain Terms

6 MCAR S 8.001 Duty of Candor.

001-1345T
A. Duty. In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee or agent of the board, it shall be the duty of each person and each member, employee or agent of the board to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

B. Violation of duty of candor. Any person who knowingly makes any material misstatement, act, or omission which results in a breach of the duty of candor may be subject to denial, suspension or revocation of any permit, license or approval which the person seeks or holds.

C. Imposition of sanctions. In any case of an alleged violation of the duty of candor in which the board seeks to deny, suspend or revoke a permit, license or approval issued or granted by the board, a contested case hearing shall be held to determine whether a violation of the duty of candor has occurred.

6 MCAR S 8.002 Definitions.

A. Act. "Act" means the Waste Management Act, Minnesota Statutes, chapter 115A.

B. Advisory council. "Advisory council" means any of the advisory councils established by the act.

C. Advisory task force. "Advisory task force" means any task force of non-board members established by the chairperson to advise the board.

D. Board. "Board" means the Waste Management Board.

E. Days. "Days" means calendar days.

F. Party. "Party" means any person whose legal rights, duties, or privileges may be determined in a hearing and any person who has properly intervened in a hearing.

G. Person. "Person" means any natural person, any state, municipality or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other entity, but does not include the Waste Management Board.

H. Service; serve. "Service" or "serve" means personal service, or, unless otherwise provided by law, service by first

class United States mail, postage prepaid, addressed to a person or party at his last known address. An affidavit verifying service shall be signed by the person making service. Service by mail is complete upon placing the item served in the mail. Agencies of the state of Minnesota may also serve other agencies of the state of Minnesota by depositing the item to be served with the Central Mailing Section, Publications and General Services Division, Department of Administration.

See AR 03503T for new
6 MCAR S 8.003 Board meetings and officers.

W01-13437
A. Board meetings.

1. Types.

a. Regular meeting. Unless otherwise specified by the board, a regular meeting shall be held on the second and fourth Thursday of each month. The time and place of each regular meeting shall be designated by the chairperson. The chairperson may direct that any regular meeting be postponed or advanced.

b. Special meetings. The chairperson, or in chairperson's absence, the vice chairperson, may call a special meeting of the board when the chairperson, or in the chairperson's absence, the vice chairperson, determines that a special meeting is necessary or desirable. The chairperson, or in the chairperson's absence, the vice chairperson, shall call a special meeting upon the request of a majority of the board members.

2. Board notice of meetings.

a. Regular meetings. The chairperson shall give written notice of the time and place of each regular meeting to all board members at least ten (10) days prior to any regular meeting. The chairperson shall give written notice of the time and place of the meeting to all board members at least five (5) days prior to the date of a regular meeting which is either advanced or postponed.

b. Special meetings. The chairperson shall give as much notice as possible to all board members prior to any special meeting. The notice shall include the time and place of the meeting. Notice shall be given at least three (3) days prior to any special meeting.

3. Public notice of meetings. The chairperson shall give the public the same notice of the time and place of regular and special meetings as is given to board members. The public shall be given notice by mailing a copy of the notice to each party to a proceeding upon which the board is scheduled to make a decision at the meeting and to the EQB Monitor, and by posting a copy of the notice in a conspicuous place in the board's offices. A copy of the agenda for a regular or special meeting shall serve as notice of a meeting if it includes the time and

place of the meeting.

4. Agenda.

a. Preparation. A proposed agenda of business to be conducted shall be prepared by the chairperson for all regular meetings of the board. The agenda shall include a list of all matters to be considered at the meeting. Board members may place items on the agenda by notifying the chairperson of the items at least fourteen (14) days prior to a regular meeting. The chairperson shall determine whether or not an item should be placed on the agenda but the chairperson shall advise the board of all items not placed on the agenda. If the item is within the board's jurisdiction and is not placed on the agenda for the meeting requested, the chairperson shall place the item on the agenda for the next succeeding regular meeting. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings provided the chairperson is notified of the item in the time to place the item on the agenda. Discussion or informational items for which no decision will be made at the meeting in question may be added to the agenda of any board meeting by motion of a board member and the affirmative vote of a majority of the board members present.

b. Notice of agenda. The chairperson shall mail a copy of the agenda for each regular meeting to every member of the board and to each party to a proceeding upon which the board is scheduled to act at the meeting and to those persons who request copies of the board's agenda, at least ten (10) days prior to the regular meeting for which the regular agenda has been prepared. The agenda for a regular meeting shall be available for public inspection in the board offices at least ten (10) days prior to the regular meeting for which the agenda has been prepared. The agenda for a special meeting shall be available for public inspection in the board offices as far in advance of the special meeting as is reasonably possible. The agenda shall be available at least three (3) days prior to the special meeting.

5. Filing of written material. All written material related to a matter to be decided by the board at a regular meeting must be delivered to the board's offices at least five (5) days before a regular meeting and at least one (1) day before a special meeting, unless otherwise specified in an order of the board.

6. Vice chairperson. At its first meeting in July of each year the board shall by a majority vote elect a member to serve as vice chairperson. It shall be the duty of the vice chairperson, in the absence or disability of the chairperson, to preside at regular and special meetings, call special meetings, execute documents approved by the board and perform such other duties as are assigned to the vice chairperson by a majority vote of the entire board.

7. Conduct of meetings.

a. Quorum. In all matters in which temporary board members are not participating, a majority of the permanent members of the board shall constitute a quorum, and a quorum must be present for the transaction of business.

b. Presiding officer. The chairperson shall preside at all board meetings at which the chairperson is present. The vice chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer among the members present whenever the chairperson and vice chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice chairperson arrives.

c. Agenda. The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the board prior to taking up other business.

d. Agenda items. No matter shall be voted upon at a regular or special board meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least five (5) days prior to a regular meeting and at least one (1) day prior to a special meeting.

e. Voting. The affirmative vote of a majority of all the members of the board shall be necessary to make any decision, including the adoption, amendment, or repeal of rules and orders. All members present, including the chairperson, shall vote or abstain on every matter presented for decision. Any board matter which does not receive a majority vote shall be placed on the agenda of the next regular monthly meeting or considered at a special meeting.

f. Decisions at open meetings. All regular and special meetings of the board shall be open to the public, and all decisions of the board shall be made at such meetings.

g. Record of meetings. The board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

h. Discussion. The chairperson shall determine the limits of time and the relevancy of discussion or debate on any matter before the board in accordance with Robert's Rules of Order.

i. Parliamentary procedure. Except as specifically provided in these operating procedures, Robert's Rules of Order shall govern any question of parliamentary procedure which may arise at any meeting of the board.

6 MCAR S 8.004 Execution of documents. The board shall review the need for any contracts exceeding \$10,000 with any single contractor. Contracts, stipulation agreements, orders, and

other documents approved by the board pursuant to law shall be executed on the board's behalf by the chairperson.

201-1345T
6 MCAR S 8.005 Staff. The chairperson shall hire staff for the board. All board work assignments to staff shall be directed through the chairperson. In determining whether services to be rendered to the board constitute contractual services or an employer-employee relationship, the board shall utilize the guidelines set out in 2 MCAR S 2.011 A.

See ARO 3505T for new
6 MCAR S 8.006 Temporary board members.

A. Eligibility. Temporary board members shall be eligible to vote only on those issues which are authorized for their review under the act. The final determination as to whether temporary board members are eligible to vote on a particular issue shall be made by the chairperson. Whenever feasible, the chairperson shall arrange the board's agenda so that the issues on which temporary board members may vote are grouped together.

B. Quorum. A majority of the total number of temporary and permanent board members eligible to vote on an issue shall constitute a quorum, however, at least six (6) permanent board members must be present to constitute a quorum.

C. Voting. The affirmative vote of a majority of all permanent and temporary board members eligible to vote on an issue shall be necessary to make any decision. All eligible members present, including the chairperson, shall vote or abstain on every matter presented for decision.

6 MCAR S 8.007 Committees. The chairperson with the board's approval may from time to time establish committees of board members as the chairperson deems necessary or desirable to facilitate the board's work. All committee recommendations shall be submitted to the board for appropriate action.

6 MCAR S 8.008 Advisory councils and advisory task forces.

A. Establishment of advisory task forces. In addition to the advisory councils established in the act, the chairperson may establish such advisory task forces as the chairperson, with the approval of the board, deems necessary or desirable. The chairperson shall dissolve any advisory task force when the advisory task force is no longer deemed necessary or desirable. Members of the advisory task forces shall be appointed by the chairperson and shall serve at the chairperson's pleasure.

B. Purpose. Advisory councils and advisory task forces shall advise the board on various matters within their area of expertise and provide technical assistance as requested.

C. Procedures. Each advisory council and advisory task force shall prepare and adopt its own set of operating procedures.

D. Recommendations. Recommendations from advisory councils and advisory task forces shall be provided to the board through the board's chairperson. Advisory councils and advisory task forces may also supply a minority recommendation to the board on an issue. The board shall respond to each formal recommendation of an advisory council or advisory task force. The response shall indicate the board's reaction to the advisory council's or advisory task force's recommendation and the current status of the issue.

6 MCAR S 8.009 Final decisions and orders.

A. Decision. The board shall make all final decisions and orders in those matters for which a hearing has been held. When required by law, the board's decision or order shall be based solely on the record from the hearing.

B. Findings and conclusion. The decision or order shall be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision. If the proposed statements of findings and conclusions submitted to the board are not acceptable, the board shall direct the staff to prepare additional findings and conclusions. Rejection of the proposed findings and conclusions shall be considered an interim decision. A final decision on the matter shall be made after the board has adopted a statement of findings and conclusions. If the board or its staff has prepared proposed findings of fact and conclusions prior to the board meeting, it shall make such proposed findings of fact and conclusions available to all parties to a matter at least ten (10) days prior to the board meeting at which the board intends to announce its decision or order.

C. Time. The board shall reach a final decision or order on the matter as expeditiously as possible after receipt of the Hearing Examiner's recommendation.

D. Manner. The chairperson shall place the matter on the agenda for a board meeting when the board is prepared to reach a decision. The decision or order shall be announced at the board meeting and in all cases the decision or order shall be entered in the minutes of the board meeting.

E. Remand. The board may remand the matter to the Hearing Examiner for further proceedings if the board determines the record is inadequate.

F. Notice. Every final decision or order in a matter for which a hearing has been held shall be served on all parties to the matter and on all persons who have submitted a statement into the record for whom the board has the person's mailing

address.

6 MCAR S 8.010 Reconsideration and rehearing.

A. Reconsideration. Any board member or any party to a matter may request the board to reconsider a final decision by notifying the chairperson within three (3) days after the meeting at which the final decision on a matter was made. The affirmative vote of two-thirds of the members of the entire board shall be required to reconsider a matter.

B. Obtaining a rehearing.

1. Petition for rehearing. At any time within three (3) days after the final decision on a matter was made by the board, any party to the matter may request a rehearing by filing a petition for rehearing and a request for reconsideration. A petition for rehearing submitted after a final decision on the matter has been reached by the board shall not be acted upon unless the board has first decided to reconsider its decision. Such petition shall contain:

- a. The name and address of the petitioner;
- b. The board designation for the matter; and
- c. The reasons for the petition.

2. Action. The board shall grant or deny a petition for rehearing as part of the record of the decision. Such petition shall be granted upon a showing that there are irregularities in the hearing which affected the outcome of a hearing, errors of law, or that there is newly discovered material evidence of such importance it would have likely altered the outcome of the hearing. A rehearing petition shall also be granted upon a showing of good cause for failure to have answered or appeared at the hearing. Evidence and argument may be presented in written or oral form, or both, by any party to the matter regarding the granting or denial of the petition.

3. Rehearing. A rehearing shall be noticed and conducted in the same manner as an original hearing on a matter, provided that the Hearing Examiner may permit service of the notice less than 30 (thirty) days prior to the rehearing.

6 MCAR S 8.011 Conflict of interest. Any member of the board who has a direct and substantial financial or employment interest relating to any matter before the board, which interest is reasonably likely to affect his impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. No employee or agent of the board, including the chairperson, shall engage in any outside employment or other conduct which is likely to affect adversely the effectiveness or efficiency of any

functions or duties the person performs for the board.

6 MCAR S 8.012 Public participation in board matters.

W01-13457
A. Board matters. Any person shall be permitted to participate in any matter in which the board is involved in carrying out its statutory duties and obligations. Participation shall include submitting statements, attending public meetings and conferences of the board, and sharing in the discussions at these meetings and conferences. Participation shall also include receiving notice of the progress of a matter before the board. Any person who wishes to receive notice of the progress of a board matter shall request in writing that the chairperson provide such notice. Thereafter, the chairperson shall give the person sufficient notice of pending events to permit participation. No action of the board shall, however, be held invalid by reason of the chairperson's failure to provide notice to persons who are not parties to a matter. Whenever any person submits a written statement or recommendation to the board on any matter, the board shall notify each person adversely affected by the statement or recommendation. The board shall, upon request, allow each person adversely affected an opportunity to respond, if the board determines that the person has not had an adequate opportunity to submit statements or recommendations on a matter.

B. Board meetings.

1. Agenda items for which no public hearing was held. Upon request made prior to a board meeting, any person who desires to present a statement on a matter which is on the agenda for the meeting and for which no public hearing was held, shall be afforded an opportunity to present statements to the board at the meeting, provided however, that all written statements must be submitted at least five (5) days before any regular meeting and one (1) day before any special meeting. Upon request made during a board meeting, any person who desires to present an oral statement on an agenda matter may do so, within such limits of time and manner as the chairperson may establish under the circumstances. The board shall allow any person adversely affected by any oral or written statement submitted under this subsection additional time in which to respond if the board determines that the person has not had an adequate opportunity to do so.

2. Agenda items for which a public hearing has been held. When a public hearing has been held on an agenda matter, any person shall be permitted to submit written statements to the board at any time up to five (5) days before the meeting or at such other time as provided in an order of the board. When the board's decision is limited to a record created at the hearing, written statements shall be limited to the comments or arguments regarding evidence in the record.

001-1345T
6 MCAR S 8.013 Ex parte communication. No party to a matter for which a hearing has been ordered by the board shall communicate with any board member concerning the matter except in writing, or orally as part of a presentation at a board meeting. Copies of any written communication shall be sent to all parties to the matter and to all board members.

See AR 03505T for new.
6 MCAR S 8.014 Reimbursement for out-of-state travel. Reimbursement from board funds to any board member or staff member other than for expenses associated with authorized out-of-state travel shall be at the discretion and with the prior approval of the chairperson.

6 MCAR S 8.015 Inspection of public records. All records and data of the board or copies thereof, which are public pursuant to Minnesota Statutes, sections 15.1611 to 15.1698 shall be available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the board offices. No public records shall be removed from the board's offices. Any inspection or copying of records shall be made in the presence of an officer, employee, or agent of the board. The board may charge and collect a reasonable fee, computed in accordance with 2 MCAR S 1.203 A.1.d.(1)-(5), for the reproduction of any public records.

6 MCAR S 8.016 Computation of time. In computing any period of time prescribed by 6 MCAR SS 8.001-8.015, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

**Rules Governing the Establishment, Alteration, and
Termination of Solid Waste Management Districts**

6 MCAR § 8.101 Establishment, termination and alteration of solid waste management districts. Rules 6 MCAR §§ 8.101-8.107 provide for the establishment, termination, and alteration of solid waste management districts as required by Minn. Stat. § 115A.63, subd. 2. They govern the process by which local petitions to establish, alter or terminate the boundaries, powers, or responsibilities of solid waste management districts are submitted to the Waste Management Board, and the process by which the Waste Management Board will review the petitions.

6 MCAR § 8.102 Definitions. For the purposes of 6 MCAR §§ 8.101-8.107, the following terms have the meaning given them, unless the context requires otherwise.

A. Miscellaneous terms. The following terms have the meaning given them in Minn. Stat. § 115A.03: agency, board, collection, disposal, disposal facility, metropolitan area, metropolitan council, person, processing, regional development commission, resource recovery, resource recovery facility, solid waste, solid waste management district or waste district, transfer station, waste facility, and waste management.

B. Alteration. "Alteration" means a change in the geographic boundaries or the articles of incorporation of a solid waste management district.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

D. Director. "Director" means the Director of the Minnesota Pollution Control Agency.

E. Metropolitan county. "Metropolitan county" means the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

F. Nonmetropolitan county. "Nonmetropolitan county" means those counties within Minnesota which are not metropolitan counties.

G. Solid Waste Management Advisory Council. "Solid Waste Management Advisory Council" means the council established pursuant to Minn. Stat. § 115A.12, subd. 1.

H. Technical Advisory Council. "Technical Advisory Council" means the council established pursuant to Minn. Stat. § 115A.12, subd. 2

6 MCAR § 8.103 Petition requirements and procedures for establishment or alteration of a district.

A. Petition contents. A petition requesting establishment or alteration of a solid waste management district shall contain the following:

1. The name of the proposed solid waste management district;
2. A physical description of the geographic area and a brief description of the social and economic characteristics of the political subdivisions within the proposed boundaries of the district or alteration to a district;
3. A map which is of a sufficient scale to accurately identify the proposed boundaries of the district, including the political subdivisions contained within the proposed district;
4. A resolution of support for the district's establishment or alteration from each petitioning county which endorses the proposed boundaries and articles of incorporation or the changes in the boundaries or articles of incorporation;
5. A statement of the purposes for establishing or altering a district which describes in specific terms the solid waste management problems of the area encompassed by the district;
6. A statement of the goals and objectives of the proposed new or altered district and a discussion of how achieving the goals and objectives will lead to resolving the solid waste problems within the district;
7. A description of the solid waste management improvements and facilities which are envisioned, together with a discussion of the impact that the improvements and facilities will have on the solid waste management problems identified by the petitioners, and on the existing solid waste management system;
8. The proposed articles of incorporation or proposed changes in the articles of incorporation signed by the chairperson of all petitioning county boards specifying which of the powers identified in Minn. Stat. §§ 115A.69 and 115A.71 the petitioners believe the district should exercise and any other powers which the petitioners believe are necessary or convenient to accomplishing the purposes, goals, and objectives of the district, together with a statement of why each proposed power is necessary or convenient to accomplishing the purpose, goals, and objectives of the district;
9. A resolution signed by the chairperson of the county board of each petitioning county which identifies the reasons why joint powers agreements under Minn. Stat. § 471.59 are not sufficient to provide the legal, planning, management, or administrative structures necessary to implement the solid waste management powers identified in the district's articles of incorporation;
10. An affidavit executed by the chairperson of the county board of each petitioning county which indicates that the local review and comment provisions of B. and Minn. Stat. § 115A.64, subd. 3, have been complied with;
11. A copy of the comprehensive solid waste management plan required by Minn. Stat. § 115A.63, subd. 3; and
12. A statement setting out the relationship between the district and all affected counties with respect to solid waste management planning, administration and enforcement functions.

B. Additional local review requirements.

1. The notice of the petition published in newspapers of general circulation in the district as required by Minn. Stat. § 115A.64, subd. 3 shall include a summary of purposes, goals, objectives and proposed powers of the district. The notice shall state that comments on the petition may be submitted and provide the name and address of a person to whom comments

may be submitted. The notice shall be published at least 60 days but no more than 120 days before the petition is submitted to the board.

2. The petitioners shall submit a copy of the petition to the Metropolitan Council for review and comment, if the petition involves a district which includes or extends into a metropolitan county.

C. Petition review procedures.

1. The board shall accept a petition for review if it conforms to the requirements of A. and Minn. Stat. §§ 115A.62-115A.72.

2. Petitions involving a district which includes or extends into a metropolitan county shall, upon acceptance, be referred to the Metropolitan Council for review. If the Metropolitan Council does not approve the establishment or alteration of the district, the board shall dismiss the petition. The Metropolitan Council shall make its decision within 90 days after receiving the petition from the board.

3. If comments have been received by the chairperson objecting to the establishment or alteration of the district, the chairperson shall request the Office of Administrative Hearings to conduct a public hearing on the petition. The hearing shall be held within 60 days after the board has accepted the petition.

4. Upon acceptance of a petition, the board shall transmit copies of the petition to the board's Solid Waste Management Advisory Council and Technical Advisory Council, and the Director of the Pollution Control Agency for their advice and recommendations concerning the disposition of the petition.

5. The Solid Waste Management Advisory Council shall make its recommendations to the board within 60 days after receipt of the petition. The Technical Advisory Council shall make its recommendations to the board within 30 days after receiving the petition.

6. The Director of the Pollution Control Agency shall complete and submit to the board the report required by Minn. Stat. § 115A.64, subd. 4, within 30 days after receiving the petition. In addition to the issues which the report must address under Minn. Stat. § 115A.64, subd. 4, the report shall comment on whether the proposed articles of incorporation of the district provide the district with adequate solid waste management administrative, planning, and enforcement authority to properly and safely carry out the solid waste management programs which the district proposes to undertake.

D. Waste Management Board decision.

1. Within 60 days after receiving the recommendations from the Solid Waste Management Advisory Council, or, in the instance of a contested case proceeding, within 60 days after receiving the report from the hearing examiner, the board shall make its decision on whether establishment or alteration of the district is in the public interest and serves the purposes of Minn. Stat. §§ 115A.62-115A.72. In making this decision the board shall consider:

a. Whether the district will reduce the need for landfilling of solid waste or improve the operation of solid waste landfills;

b. Whether the district will provide coordinated solid waste management by all or portions of two or more counties;

c. Whether the establishment or alteration of a district will enhance the protection or preservation of natural resources of the state;

d. Whether the district will increase the potential for resource recovery;

e. Whether the delivery of solid waste management services, public or private, will be more efficient or more convenient; and

f. Whether the articles of incorporation of the district provide the district with adequate solid waste management planning, administrative, and enforcement authority to properly and safely carry out the solid waste management programs which the district proposes to undertake.

2. If the board determines that the establishment or alteration of a district as proposed in the petition would not be in the public interest and would not serve the purposes of Minn. Stat. §§ 115A.62-115A.72, the board shall notify the petitioners by certified mail of its intent to deny the petition. If a contested case hearing has not been held on the petition, and if the petitioners request a contested case hearing within 30 days after the board issues its notice of intent to deny the petition, the board shall request the Office of Administrative Hearings to conduct a hearing. The hearing shall be held within 60 days after the board receives the request for a hearing. The board shall make its final decision on the petition within 60 days after receiving the hearing examiner's report. In addition to the notification requirements of Minn. Stat. § 115A.64, subd. 4, the board shall also notify the Minnesota Pollution Control Agency of its decision.

6 MCAR § 8.104 Petition requirements and procedures for termination of a district.

A. Petition contents. A petition to terminate a district shall include:

1. A statement identifying why the district is no longer in the public interest, addressing at least the issues specified in 6 MCAR § 8.103 D.1.;

2. A statement of the solid waste management alternatives which will be utilized to manage the waste stream in the absence of a district;

3. An affidavit executed by the chairperson of the county boards of each petitioning county which states that the notice provisions of B. and Minn. Stat. § 115A.66, subd. 1, have been complied with; and

4. A copy of all written comments received by the petitioners on the petition.

B. Additional local review requirements.

1. The notice of the petition published in newspapers of general circulation in the district pursuant to Minn. Stat. § 115A.66, subd. 1, shall include a summary of the petition to terminate, including a brief discussion of the potential positive and negative impacts of terminating the district. The notice shall also state that comments may be submitted on the petition and provide the name and address of a person to whom comments may be submitted. The notice shall be published at least 60 days but not more than 120 days before the petition is submitted to the board.

2. A copy of the petition shall be submitted to the appropriate regional development commission or commissions, or, if all or part of a metropolitan county is included within the district, to the Metropolitan Council for review and comments at least 60 days before submission of the petition to the board.

C. Termination review procedures.

1. The board shall accept a petition for review if it conforms to the requirements of A. and Minn. Stat. § 115A.66.

a. If the petition does not conform with A. or Minn. Stat. § 115A.66, the chairperson shall return it immediately to the petitioners with a statement identifying the deficiencies in the petition.

b. The board may require the petitioners to republish the notice of termination and renotify political subdivisions if the board determines that significant changes to the original petition results from the corrected deficiencies.

2. If comments objecting to the termination of a district are included with the petition, the board shall request the Office of Administrative Hearings to conduct a hearing on the petition. The hearing shall be held within 60 days after the board accepts a petition.

3. Upon acceptance of a petition, the board shall transmit copies of the petition to the board's Solid Waste Management Advisory Council and Technical Advisory Council, and the Director of the Pollution Control Agency, for their advice and recommendations concerning the disposition of the petition. Petitions to terminate a district which includes or extends into a metropolitan county shall be referred to the Metropolitan Council for review.

4. The Solid Waste Management Advisory Council and Metropolitan Council shall make their recommendations to the board within 90 days after receiving the petition. The Technical Advisory Council and the director shall make their recommendations to the board within 30 days after receiving the petition.

D. Waste Management Board decision.

1. Within 60 days after receiving the Solid Waste Management Advisory Council's recommendations, or in the instance of a contested case hearing, within 60 days after receiving the report of the hearing examiner, the board shall determine whether termination of the district is in the public interest. In determining whether the termination of a district is in the public interest the board shall consider:

a. Whether the termination will reduce the need for landfilling of solid waste or in some manner improve the operation of solid waste landfills;

b. Whether the termination will improve the coordination of solid waste management services in two or more counties;

c. Whether the termination will enhance the protection or preservation of the natural resources of the state;

d. Whether the termination will increase the potential for resource recovery;

e. Whether the termination will provide for more efficient or more convenient delivery of public or private solid waste management services;

f. Whether the purposes for which the district was established have been accomplished or are no longer necessary to accomplish; and

g. The impact the termination would have on the solid waste management system serving the district.

2. The board shall not approve the termination of any district which has outstanding bonds or obligations issued or incurred pursuant to the

authority granted in Minn. Stat. § 115A.71.

3. If the board determines that the termination of a district as proposed in the petition would not be in the public interest, the board shall notify the petitioners by certified mail of its intent to deny the petition. If a contested case hearing has not been held on the petition, and if the petitioners request a contested case hearing within 30 days after the board issues its notice of intent to deny the petition, the board shall request the Office of Administrative Hearings to conduct a hearing. The hearing shall be held within 60 days after the board receives the request for a hearing. Within 60 days after the receipt of the hearing examiner's report the board shall make its final decision on the petition.

4. If the board determines that termination would be in the public interest, the board shall submit a certified copy of its findings and order to each political subdivision wholly or partly within the district, the Director of the Minnesota Pollution Control Agency and to the Office of Secretary of State.

6 MCAR § 8.105 Designation of resource recovery facilities. Articles of incorporation which would permit a district to require that all or any portion of the solid waste generated within the district's boundaries be taken to a designated facility pursuant to Minn. Stat. § 115A.70 shall not be effective prior to July 1, 1982. Districts which are established prior to July 1, 1982, may request authority to designate facilities on or after July 1, 1982. The request to designate facilities shall be considered a substantial change in the district's powers requiring a petition for alteration of the district. After July 1, 1982, review of articles of incorporation providing for designation of facilities shall be reviewed together within the review of the remainder of the petition for establishment of a district.

6 MCAR § 8.106 Extension of review periods. Review periods established by 6 MCAR §§ 8.101 to 8.104 other than those specifically required by Minn. Stat. §§ 115A.62-115A.72, may, upon request made prior to the expiration of the period, be extended by the board, if, based on the complexity or controversial nature of the petition, the requesting party is able to demonstrate the need for more time. If the time periods provided for review expire and no extension has been granted, the board may proceed in its review of the petition without the comments of the affected entity.

6 MCAR § 8.107 Additional information. The chairperson of the board may, upon his own initiative or upon the request of any person required to review the petition under 6 MCAR §§ 8.101-8.104 or Minn. Stat. §§ 115A.62-115A.72, request the petitioners to supply additional information if the chairperson determines that the information would be necessary or useful in deciding whether the petition should be granted or denied.

6 MCAR S 8.201 Supplementary review of decisions concerning establishment of certain facilities. Rules 6 MCAR SS 8.201-8.218 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minnesota Statutes, sections 115A.32 to 115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

6 MCAR S 8.202 Definitions. For the purposes of 6 MCAR SS 8.201-8.218, the following terms have the meanings given them unless the context requires otherwise.

A. Agency. "Agency" means the Pollution Control Agency.

B. Board. "Board" means the Waste Management Board.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

D. Person. "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency or the Waste Management Board.

E. Political subdivision. "Political subdivision" means any municipal corporation, government subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

6 MCAR S 8.203 Eligibility for supplementary review. The following persons shall be eligible to request supplementary review by the board pursuant to Minnesota Statutes, sections 115A.32 to 115A.39:

A. A generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment, except that the Metropolitan Waste Control Commission shall not be eligible to request review for a sewage sludge disposal facility or for a solid waste facility with a proposed permitted life of longer than four years.

B. A political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is located outside the metropolitan area and which is no larger than 250 acres, not including any

proposed buffer area, provided that if the petitioner is a political subdivision acting on its own behalf, the political subdivision shall have completed a plan conforming to the requirements of Minnesota Statutes, section 115A.46;

C. A generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only;

D. A person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included within one of the areas on the board's inventory of preferred areas for such facilities adopted pursuant to Minnesota Statutes, section 115A.09;

E. A person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person.

6 MCAR § 8.204 Review of petitions for supplementary review.

A. Acceptance of petition. The chairperson on behalf of the board shall accept a petition for review if it conforms to the requirements of B. If the petition does not conform to the requirements of B., the chairperson shall return it to the petitioners with a statement identifying the deficiencies in the petition.

B. Contents of petition. A petition shall include:

1. The name, address, and telephone number of the petitioner;
2. The name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in 1.;
3. The street address and legal description of the location of the proposed facility;
4. A description of the proposed facility;
5. A list of the existing permits and pending permit applications for the proposed facility together with a copy of any permits which have been issued;
6. An estimate of the required construction time;
7. An estimate of the functional life of the proposed facility;
8. For processing facilities, a description of the types

of processes to be used;

9. For processing facilities, a statement of the design capacity of each process;

10. For processing facilities, a description of the materials which will be treated at the proposed facility as specified in the agency permit application;

11. A copy of the resolution, order, or other action of a political subdivision refusing to approve the establishment or operation of the proposed facility or a statement that the required approval has been refused;

12. For petitioners who qualify for review under 6 MCAR S 8.203 B., a copy of the required solid waste plan conforming to the requirements of Minnesota Statutes, section 115A.46; and

13. For petitioners who qualify for review under 6 MCAR S 8.203 D. or E., a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minnesota Statutes, section 115A.11, if the plan has been adopted at the time the petition is submitted.

6 MCAR S 8.205 Additional information. The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

6 MCAR S 8.206 Procedure for supplementary review.

A. First phase. The first phase of the supplementary review process shall take place in the 90-day period following acceptance of a petition. In this phase of the review, temporary board members shall be appointed, the issues which will be the subject of review shall be identified, and mediation services shall be made available to the petitioner and the political subdivision.

B. Second phase. The second phase of the supplementary review process shall commence with the board's decision on the scope and procedures for the review and shall extend for a period of 90 days following the decision. During the second phase of the review, the board shall hold any required public hearings and make its final decision on approving or not approving the proposed facility.

6 MCAR S 8.207 Identification of issues.

A. Meetings with petitioner and political subdivision. Within 40 days after the board has accepted a petition for review, the chairperson shall prepare a compilation of the

issues which may be relevant to the supplementary review. To assist in the identification of these issues, the chairperson may meet with the petitioner and representatives of the political subdivision, either separately or together, or the chairperson may request a written statement of the issues which the petitioner and the political subdivision believe should be addressed in the review.

B. Public meetings. Within 60 days after the board has accepted a petition for review, the board shall hold an informal public meeting in the area where the facility is proposed. The purpose of this meeting shall be to permit members of the public to discuss the issues which should be reviewed by the board.

C. Public meeting procedures.

1. The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located.

2. The meeting shall be held in the area in which the facility is proposed to be located.

3. The meeting shall be conducted by the chairperson or his designee.

4. Copies of the compilation of issues prepared by the chairperson shall be available for review.

5. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered.

6. A summary of the issues raised at the public meeting shall be prepared.

6 MCAR S 8.208 Appointment of temporary board members.

A. Notification to political subdivision. Within ten days after a petition has been accepted for review, the chairperson shall notify the political subdivisions which have the responsibility to appoint temporary board members that a petition affecting their areas has been accepted.

B. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minnesota Statutes, section 115A.34 within 45 days after the date the petition was accepted by the board.

C. Failure to appoint members. If a political subdivision fails to appoint the required temporary board members within 45 days after the date the petition was accepted by the board, the chairperson shall notify the governor's office within five

working days of the failure to appoint. The appointment of the temporary board members shall then be made by the governor in accordance with Minnesota Statutes, section 115A.34.

6 MCAR S 8.209 Mediation.

ARC 18951
A. Notice of mediation. Within ten days following acceptance of a petition for review, the chairperson shall notify both the petitioner and the political subdivision that the services of an impartial mediator will be made available to the petitioner and the political subdivision to assist in the resolution of the issues separating the petitioner and the political subdivision.

B. Conditions for mediation. Mediation services shall be offered in every dispute involving supplementary review. The offer of mediation services shall terminate 25 days after a petition is accepted. Mediation services may be requested by either the petitioner or the political subdivision; however, the petitioner and the political subdivision must agree to mediation.

C. Selection of mediator. A single impartial mediator shall be selected for each review. The petitioner and the political subdivision shall have a ten-day period after notification of an agreement to mediate to select a mediator acceptable to both parties. If an impartial mediator has not been selected within this ten-day period, a mediator shall be appointed by the chairperson.

D. Length of mediation. Mediation shall be conducted for a period of 30 days following the appointment of a mediator by the chairperson unless the chairperson determines that continued mediation services will be beneficial to the resolution of the case.

E. Termination of mediation. The mediator, the petitioner, or the political subdivision may terminate mediation at any time. The mediator shall immediately notify the chairperson of the termination of mediation.

F. Compensation of mediator. The board shall pay the costs of mediation.

G. Decision. If an agreement is reached by the close of the mediation period, the agreement shall be referred to the board for review.

6 MCAR S 8.210 Recommended statement of issues. At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall

2018957
be provided to the petitioner and the political subdivision.

6 MCAR S 8.211 Board meeting to establish scope and procedures for the second phase of the review.

A. Scope; statement of issues. At the meeting held to commence the supplementary review process, the chairperson shall present the recommended statement of issues involved in the review to the board including the temporary board members. The board, after providing an opportunity for public comment, shall adopt a statement of issues for review.

B. Procedures.

1. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under 6 MCAR S 8.213.

2. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under 6 MCAR S 8.212.

3. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

6 MCAR S 8.212 Hearing procedures following mediated agreement.

A. Timing of hearing. The public hearing on the mediated agreement shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

B. Notice of hearing. The board shall provide written notice of the hearing to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of the supplementary review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

1. Specify the date, time, and location of the hearing;
2. Describe the proposed facility and its location;
3. Describe the permits which have been issued for the

proposed facility;

4. Briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

C. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

D. Procedures for the hearing.

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings.

2. A majority of the permanent board members shall be present at the hearing.

3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.

4. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement.

5. The political subdivision and the petitioner shall explain the mediated agreement.

6. Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements.

7. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

8. The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case.

9. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.

10. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.

11. A transcript of the hearing shall be prepared.

6 MCAR S 8.213 Contested supplementary review hearing.

A. Timing of hearing. A contested supplementary review hearing shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

B. Notice of hearing. Written notice of the hearing shall be provided to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of a contested review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

1. Specify the date, time, and location of the hearing;
2. Describe the proposed facility and its location;
3. Describe the permits which have been issued for the proposed facility;
4. Briefly set out the scope and procedures which will be used in the supplementary review;
5. Identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained;
6. Include the name of a person on the board's staff to whom questions about the review may be directed.

C. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

D. Definition; party. "Party" for the purposes of E.-V. means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under I.

E. Hearing examiner; duties. The hearing shall be conducted by a hearing examiner assigned by the chief hearing examiner. The hearing examiner will not prepare a report following the hearing. The hearing examiner shall perform the following duties:

1. Hear and rule on motions;
2. Grant or deny requests for discovery including the

taking of depositions;

3. Receive and act upon requests for subpoenas when appropriate;

4. Preside at the hearing;

5. Administer oaths and affirmations;

6. Examine witnesses when the hearing examiner deems it necessary to make a complete record;

7. Make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;

8. Rule on objections;

9. Do all things necessary and proper to the performance of 1.-8.; and

10. Perform other duties which may be delegated to the hearing examiner by the board.

F. Disqualification of hearing examiner. The hearing examiner shall withdraw from participation in a contested review at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief hearing examiner shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

G. Waste Management Board members. A majority of the permanent board members shall be present at the hearing. Members of the board may address questions to any witness or party.

H. Right to counsel. Any party may be represented by legal counsel throughout the proceedings by a person of his choice or by himself if not otherwise prohibited as the unauthorized practice of law.

I. Intervention. Any person who desires to intervene as a party shall submit a petition to intervene to the hearing examiner at least ten days before the hearing. Copies of the petition to intervene shall be served on the parties to the hearing. The petition shall state how the petitioner will be affected by the hearing, shall set forth grounds and purposes for which intervention is sought, and shall show that no other party is able to adequately represent the petitioner's interests at the hearing. At a time determined by the hearing examiner, but no later than the commencement of the hearing, the hearing examiner shall review any petitions for intervention and shall permit the parties to the hearing to present their objections to the intervention. Intervention shall be allowed unless the hearing examiner determines that the petitioner's interest is adequately represented by one or more parties participating in

the case.

J. Default. The board may decide a review adverse to a party which defaults. Upon default, the allegations and evidence provided by the nondefaulting party shall be deemed true without further evidence. A default occurs when a party fails to appear at a hearing, fails to comply with any interlocutory orders of the hearing examiner, or fails to timely prefile testimony, and is unable to demonstrate that good cause existed for any failure.

K. Participation by the public. The hearing examiner may hear the testimony of and receive exhibits from any person at the hearing, but no person shall become, or be deemed to become, a party by reason of the person's participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

L. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimony with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

M. Rights of parties. Parties shall have the right to present evidence, rebut evidence, argue with respect to the issues, and cross-examine witnesses.

N. Witnesses. Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony shall be under oath or affirmation. The board may call its own witnesses if the board or the chairperson acting on behalf of the board determines that testimony from the witness would be helpful in reaching a decision in the case. The board's staff may also present evidence during the review.

O. Prehearing procedures.

1. The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested review hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the hearing examiner. The hearing examiner shall hold any prehearing conferences in a

manner and at a time which will not interfere with the completion of the review process in the time allowed by Minnesota Statutes, section 115A.35 and this rule.

2. Any application to the hearing examiner for an order shall be by motion, shall state the grounds for the order, and shall set forth the relief or order sought. A written notice of any motion shall be provided to all parties and to the board and shall be served five days prior to the submission of the motion except where impractical. All orders by the hearing examiner, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the board. In ruling on motions where these procedures are silent, the hearing examiner shall apply the Rules of Civil Procedure for the District Courts for the State of Minnesota to the extent that he or she determines that it is appropriate to do so in order to promote a fair and expeditious proceeding.

P. Discovery.

1. Each party shall, within ten days of a demand by another party, disclose the names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Each party shall also disclose any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce those statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the hearing examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

2. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

3. Upon the motion of a party, the hearing examiner may order discovery of any other relevant material or information, provided that privileged work product of attorneys, investigators, and similar people shall not be discoverable. The hearing examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the hearing examiner, any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota may be allowed provided that the request can be shown to be needed for the

proper presentation of a party's case, can be completed within the time allowed in this rule, and the issues are significant enough to warrant extensive discovery. Upon the failure of a party to reasonably comply with this type of order by the hearing examiner, the hearing examiner may order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order, or may refuse to allow the party failing to comply to support or oppose designated claims or defenses, or may prohibit him from introducing designated matters in evidence.

4. When a party is asked to reveal material which he considers to be proprietary information or trade secrets, he shall bring the matter to the attention of the hearing examiner who shall make protective orders which are reasonable and necessary or as otherwise provided by law.

5. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minnesota Statutes, section 115A.35 and this rule. The hearing shall not be continued to permit additional time for discovery.

Q. Depositions to preserve testimony. Upon the request of any party, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve the testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

R. Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, and shall name all persons to be subpoenaed. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of the State of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance with it, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

S. Rules of evidence.

1. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall utilize the rules of privilege recognized by

law. Evidence which is incompetent, irrelevant, or unduly repetitious may be excluded.

2. All evidence to be considered in the case shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

4. The hearing examiner or the board may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. A party may call an adverse party, his agent or employees, and interrogate him or them by leading questions and contradict and impeach him or them on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of the examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

6. Testimony in the hearing shall be limited to issues identified by the board in its statement of issues.

T. The record. The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain:

1. All pleadings, motions, and orders;
2. Evidence received or considered;
3. Offers of proof, objections, and rulings on them;
4. All memoranda or data submitted by any party in connection with the case; and
5. The transcript of the hearing.

U. Conduct of hearing. Unless the hearing examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

1. The hearing examiner shall briefly review the procedural rules for the hearing;
2. Each party may make an opening statement in a sequence determined by the hearing examiner;
3. Each party may then present a summary of its prefiled

testimony in a sequence determined by the hearing examiner;

4. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner;

5. When all parties and witnesses have been heard, opportunity shall be offered to present final argument in a sequence determined by the hearing examiner. Final argument may, in the discretion of the board, be in the form of written memoranda or oral argument. Written memoranda may, in the discretion of the board, be submitted simultaneously or sequentially and within time periods the board may prescribe; provided, however, that all written material shall be submitted at least 30 days before the close of the supplementary review period; and

6. The record of the case shall be closed on the date set by the board for receiving the final written memorandum or late filed exhibits which the parties and the board have agreed should be received into the record, or upon receipt of the transcript of the hearing.

V. Completion of hearing. The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minnesota Statutes, section 115A.35 and this rule.

6 MCAR S 8.214 Reconciliation procedures. At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minnesota Statutes, section 115A.38.

6 MCAR S 8.215 Decision of Waste Management Board.

A. The record. No factual information or evidence which is not a part of the hearing record shall be considered by the board in the determination of the case.

B. Administrative notice. The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

C. Participation in decision. Board members not present at the hearing may participate in the final decision to approve or not approve the proposed facility following a review of the record of the hearing.

D. Recommended disposition. In the case of a mediated agreement, the mediated agreement shall serve as the recommended decision. When an agreement has not been reached, the board's staff shall prepare and, at least ten days prior to the board's final decision in the case, distribute a recommended decision to each party to the proceeding and to any other person who has

requested in writing a copy of the recommended decision.

E. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its decision on the factors listed in 1.-6. Neither the petitioner nor the political subdivision shall be deemed to have the burden of proof as to any of the factors. The factors are:

1. The risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility; water, air, and land pollution; and fire or explosion, where appropriate; and the degree to which the risk or effect may be alleviated;
2. The consistency of the proposed facility with, and its effect on, existing and planned local land use and development, local laws, ordinances, and permits; and local public facilities and services;
3. The adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;
4. The need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;
5. Whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs and the effects of the alternatives on the cost to generators; and
6. Any issue within the established scope of the supplementary review which is not addressed by 1.-5.

F. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in 6 MCAR S 8.215 E. and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in 6 MCAR S

8.215 E. and the record of the hearing.

G. Exparte communication. No party to a hearing shall communicate with any board member concerning the hearing except in writing, or orally as part of a presentation at the hearing or at a board meeting. Copies of any written communication shall be sent to all parties to the hearing and to all board members.

6 MCAR S 8.216 Terms, conditions, and requirements of permitting agencies.

A. Board action. The board shall resolve any conflicts between state agencies regarding terms, conditions, and requirements for a permit in favor of the more stringent terms, conditions, and requirements. Should there be a question as to which term, condition, or requirement is more stringent, the board shall make the determination of which term, condition, or requirement is more stringent.

B. Addition of provisions. If, based on the factors set out in 6 MCAR S 8.215 E., the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

C. Notification of decision. The board shall notify permitting agencies affected by the board's decision requiring the permitting agencies to impose more stringent terms, conditions, or requirements within ten days after the board's final decision.

6 MCAR S 8.217 Revocation of approval. The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minnesota Statutes, sections 15.0418 to 15.052 and the rules of the Office of Administrative Hearings relating to contested case proceedings in 9 MCAR SS 2.201-2.222, it is determined that the petitioner knowingly made material false statements, representations or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to the provisions of 6 MCAR SS 8.210-8.213.

6 MCAR S 8.218 Computation of time. In computing any period of time prescribed under 6 MCAR SS 8.201-8.215, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

Insert New →
AR02935T, AR02605T